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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1991

BURLINGTON NORTHERN RAILROAD COMPANY,
Petitioner,

vs.

WILLIAM D. FORD,
Respondent.

BURLINGTON NORTHERN RAILROAD COMPANY,
Petitioner,

vs.

THOMAS L. JOHNSON,
Respondent.

On Writ of Certiorari
to the Supreme Court of the State of Montana

BRIEF OF AMICI CURIAE STATES OF MONTANA, NEW MEXICO, NORTH DAKOTA, SOUTH DAKOTA, TEXAS AND WYOMING

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TABLE OF CONTENTS

Page

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

I. TO THE EXTENT THE MONTANA VENUE STATUTE PERMITS A FOREIGN CORPORATION OR OTHER NONRESIDENT TO BE SUED IN A COUNTY WITH WHICH IT HAS NO CONTACT, BURLINGTON NORTHERN LACKS STANDING TO CHALLENGE THE PROVISION AS A VIOLATION OF EQUAL PROTECTION OF THE LAWS. 3

II. SUBJECTING A FOREIGN RAILROAD CORPORATION TO SUIT IN A COUNTY IN WHICH IT CONDUCTS BUSINESS COMPORTS WITH EQUAL PROTECTION STANDARDS 7

CONCLUSION 17

TABLE OF AUTHORITIES

Page

CASES

Aetna Finance Co. v. Gutierrez,
632 P.2d 1176 (N.M. 1981) 11

Allen v. Wright,
468 U.S. 737 (1984) 4

American International Hospital v.
Chicago Tribune Co.,
458 N.E.2d 1305 (Ill. Ct. App. 1983) 12

American Motorists Ins. Co. v. Starnes,
425 U.S. 637 (1976) 8, 10, 11, 12, 14

Asarco, Inc. v. Kadish,
490 U.S. 605 (1989) 3

Bain Peanut Co. of Texas v. Pinson,
282 U.S. 499 (1931) 8

Banning v. Minidoka Irrigation District,
406 P.2d 802 (Idaho 1965) 12

Boyd v. Grand Trunk Western R. Co.,
338 U.S. 263 (1949) 15

Burch v. Louisiana,
441 U.S. 130 (1979) 6

Cincinnati Street R. Co. v. Snell,
193 U.S. 30 (1904) 8, 12

TABLE OF AUTHORITIES - Continued

Page

City of Los Angeles v. Lyons,
461 U.S. 95 (1983) 4

Clark v. Louisville & N. R. Co.,
130 So. 302 (Miss. 1930) 12

Coastal States Gas Producing Co. v.
City of McAllen,
540 S.W.2d 808 (Tex. Civ. App. 1976) 11

Commercial Insurance Co. v. Adams,
366 S.W.2d 801 (Tex. Civ. App.),
aff'd, 369 S.W.2d 927 (1963) 11, 14

G.D. Searle & Co v. Cohn,
455 U.S. 404 (1982) 10

Gregory v. Ashcroft,
111 S. Ct. 2395 (1991) 8

Hercules Powder Co. v. Tyrone,
124 So. 74 (Miss. 1929) 12

Hughes v. Alexandria Scrap Corporation,
426 U.S. 794 (1976) 10, 13

Jackson Water Works v.
Public Utilities Commission,
793 F.2d 1090 (9th Cir. 1986),
cert. denied, 479 U.S. 1102 (1987) 12

James v. Norfolk & Western Ry. Co.,
430 F. Supp. 1317 (S.D. Ohio 1976) 16

TABLE OF AUTHORITIES - Continued

Page

Mapston v. Joint School Dist. No. 8,
740 P.2d 676 (Mont. 1987) 14

Marbury v. Madison,
1 Cranch 137 (1803) 5

McGowan v. State of Maryland,
366 U.S. 420 (1961) 8

Metropolitan Casualty Ins. Co. v. Brownell,
294 U.S. 580 (1935) 10

Metropolitan Life Ins. Co. v. Ward,
470 U.S. 869 (1985) 9, 16

Miles v. Illinois Cent. R. Co.,
315 U.S. 698 (1942) 16

Missouri v. Lewis,
101 U.S. 22 (1879) 1, 8

Nashville, C. & St. L. R. Co. v. Wallace,
288 U.S. 249 (1933) 4

Northeast Bancorp, Inc. v. Board of
Governors of the Federal Reserve System,
472 U.S. 159 (1985) 17

Philco-Ford Corp. v. Holland,
548 S.W.2d 828 (Ark. 1977) 12

Phillips Petroleum Co. v. Smith,
61 P.2d 184 (Okla. 1936) 12

TABLE OF AUTHORITIES - Continued

Page

Pintlar Corp. v. Bunker Ltd. Partnership,
786 P.2d 543 (Idaho 1990) 12

Platt v. Sears, Roebuck & Co.,
721 P.2d 336 (Mont. 1986) 14

Power Mfg. Co. v. Saunders,
274 U.S. 490 (1927) 3, 10, 11

Schlesinger v. Reservists Committee
to Stop the War,
418 U.S. 208 (1974) 4

Secretary of State of Maryland v.
Joseph H. Munson Co.,
467 U.S. 947 (1984) 5

Southern Pac. Co. v. Klinge,
65 F.2d 85 (10th Cir.),
cert. denied, 290 U.S. 657 (1933) 16

State ex rel. Bond & Goodwin & Tucker v.
Superior Court,
289 U.S. 361 (1933) 10

State ex rel. Twin City &
Southern Bus Co. v. District Court,
225 N.W. 915 (Minn. 1929) 12

Sugarman v. Dougall,
413 U.S. 634 (1973) 8

TABLE OF AUTHORITIES - Continued

Page

United States v. Carolene Products Co.,
304 U.S. 144 (1938) 9

United States v. Raines,
362 U.S. 17 (1960) 5, 7

Valley Forge Christian College v.
Americans United for Separation
of Church and State,
454 U.S. 464 (1982) 5

Warth v. Seldin,
422 U.S. 490 (1975) 4, 5

Western & Southern Life Ins. Co. v.
State Board of Equalization,
451 U.S. 648 (1981) 9

Wilson & Co., Inc. v. Hickey,
97 P.2d 564 (Okla. 1939) 12

Worcester County Trust Co. v. Riley,
302 U.S. 292 (1937) 1

CONSTITUTIONAL PROVISIONS:

Montana Constitution (1972)
Art. II, § 16 2

United States Constitution
Article III 3, 4, 5
Amendment XIV 7, 8, 13

TABLE OF AUTHORITIES - Continued

Page

STATUTES:

Montana Code Annotated (1991)
§ 25-2-118 . . . . . 1, 6
§ 35-1-113(17) 15
§ 35-1-1026 14
§ 35-1-1028(1)(e) 14
§ 35-1-1032(1) 14
§ 35-1-1033 14
§ 35-1-1104 15

United States Code
45 U.S.C. §§ 51 to 60 3
45 U.S.C. § 56 15

OTHER:

United States Supreme Court Rules
Rule 37.5 1

Amici curiae States of Montana, New Mexico, North Dakota, South Dakota, Texas and Wyoming, through their respective Attorneys General, respectfully submit pursuant to S. Ct. R. 37.5 a brief in support of the respondents' position with respect to the validity of Mont. Code Ann. § 25-2-118 (1991), as applied to the instant cases. Amici agree with the respondents' argument that Montana's venue statute is constitutional on its face and does not deny equal protection of the laws to nonresidents of the State. Amici take the position, however, that this Court may decide the case on a narrower ground and need not reach the validity of the statute's broadest application.

INTEREST OF AMICI CURIAE

The legislatures of each of the amici States have established procedures for the conduct of civil litigation in their state courts, including venue statutes which provide differing requirements either for domestic and foreign corporation defendants or for resident and nonresident defendants. Amici have a vital interest in constitutional issues that affect the powers and responsibilities of state governments, particularly with respect to matters governing the conduct of judicial proceedings in state courts.

State legislatures have broad authority in regulating their judicial systems. "It is the right of every State to establish such courts as it sees fit, and to prescribe their several jurisdictions as to territorial extent, subject-matter, and amount, and the finality and effect of their decisions, provided it does not [deprive any person of rights guaranteed by the Constitution], including the equal right to resort to the appropriate courts for redress." *Missouri v. Lewis*, 101 U.S. 22, 30 (1879). States also have broad discretion to fix rules regarding domicile and residence. *Worcester County Trust Co. v. Riley*, 302 U.S. 292, 299

(1937). Venue restrictions based on residency of the parties provide a valuable and legitimate tool for regulating the distribution of cases among the courts of the State and serve the State's goal of providing ready access to its courts. Provision of such access is particularly important to a State such as Montana, where the State's constitution requires its courts of justice to "be open to every person, and speedy remedy afforded for every injury of person, property, or character." Mont. Const. art. II, § 16 (1972).

SUMMARY OF ARGUMENT

The broad contention of the petitioner that Montana law governing the place of trial against nonresidents deprives foreign corporations of equal protection of the laws goes well beyond the facts and circumstances of the case before the Court. Because it was sued in a county in which it conducts substantial business activity, Burlington Northern lacks standing to argue that, as applied to a hypothetical nonresident corporation in a county in which it does no business, the statute is unconstitutional. Petitioner asks this Court to engage in premature constitutional interpretation of the statute upon facts not present in the instant case.

This case is confined to the question whether the petitioner has been denied equal protection of the laws by virtue of the fact that it was sued in a county in which it does business when a domestic corporation generally may be sued only in the county of its principal place of business. In view of a State's broad authority to define the structure of its judicial system and to fix the place of trial of civil actions, this distinction must be upheld if supported by any rational basis. A rational basis exists for

the different treatment in order to afford ready access to the courts of the State in suits against foreign corporations subject to a lesser degree of effective control by the State. This concern is particularly legitimate where -- as here -- a foreign corporation need not identify a principal place of business within the State. Unlike the situation addressed by the Court in *Power Mfg. Co. v. Saunders*, 274 U.S. 490 (1927), the distinction thus addresses valid State concerns and has not resulted in "real and substantial" discriminatory treatment against the petitioner in this case.

Finally, since Congress has expressly sanctioned broad venue options for an injured plaintiff in an action brought under the Federal Employer's Liability Act, 45 U.S.C. §§ 51 to 60, this Court should hesitate to find unconstitutional a State forum-selection provision which honors the plaintiff's choice where that choice has resulted in a suit against the railroad in a county in which it conducts business.

ARGUMENT

I. TO THE EXTENT THE MONTANA VENUE STATUTE PERMITS A FOREIGN CORPORATION OR OTHER NONRESIDENT TO BE SUED IN A COUNTY WITH WHICH IT HAS NO CONTACT, BURLINGTON NORTHERN LACKS STANDING TO CHALLENGE THE PROVISION AS A VIOLATION OF EQUAL PROTECTION OF THE LAWS.

Standing is a threshold question in every federal case, one which this Court will raise on its own initiative if necessary, since its "legitimate exercise of judicial power is confined both by statutes and by Article III of the Constitution." *Asarco, Inc. v. Kadish*, 490 U.S. 605, 611

(1989). This inquiry involves consideration of both constitutional and prudential limitations. "In its constitutional dimension, standing imports justiciability: whether the [petitioner] has made out a 'case or controversy' between [it]self and the [respondent] within the meaning of Art. III." *Warth v. Seldin*, 422 U.S. 490, 498 (1975).[1]

The elements of Article III standing require: first, that the petitioner allege injury that is "distinct and palpable," as opposed to "abstract," "conjectural," or "hypothetical"; second, that the injury be "fairly traceable" to the allegedly unlawful conduct; and third, that the injury likely will be redressed by the requested relief. *See generally Warth*, 422 U.S. at 498-501; *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983); *Allen v. Wright*, 468 U.S. 737, 751 (1984). Concrete injury is required because it "removes from the realm of speculation whether there is a real need to exercise the power of judicial review in order to protect the interests of the complaining party." *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 221 (1974). This further serves the function of "insuring that [constitutional] adjudication does not take place unnecessarily." *Id.*

Closely aligned with the "concrete injury" requirement is the prudential condition that the petitioner "generally

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[1]A case presents a genuine case or controversy if "valuable legal rights ... will be directly affected to a specific and substantial degree by the decision of the question of law," but not if the parties are "attempting to secure an abstract determination by the Court of the validity of a statute ... or a decision advising what the law would be on an uncertain or hypothetical state of facts[.]" *Nashville, C. & St. L. R. Co. v. Wallace*, 288 U.S. 249, 262 (1933).

must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth*, 422 U.S. at 499. Prudential limitations, though related to Article III concerns, are "essentially matters of judicial self-governance" by which the Court will decline to resolve needlessly a constitutional issue.[2] The rationale for allowing a party to assert only its own rights is twofold. "The limitation 'frees the Court not only from unnecessary pronouncement on constitutional issues, but also from premature interpretations of statutes in areas where their constitutional application might be cloudy,' *United States v. Raines*, 362 U.S. [17], at 22 [1960], and it assures the court that the issues before it will be concrete and sharply presented." *Secretary of State of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947, 955 (1984).

In *Raines*, repeating the longstanding caution that scrutiny of statutes for constitutional validity is "'the gravest and most delicate duty that this Court is called on to perform,'" (quoting *Marbury v. Madison*, 1 Cranch 137, 177-80 (1803)), the Court emphasized:

> This Court, as is the case with all federal courts, "has no jurisdiction to pronounce any statute, either of a state or of the United States, void, because irreconcilable with the constitution, except

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[2]Other prudential limitations include the requirements that the petitioner must allege injury that is more than a "'generalized grievance' shared in substantially equal measure by all or a large class of citizens," *Warth*, 422 U.S. at 499, and to allege an interest that is arguably within the zone of interests protected or regulated by the constitutional guarantee in question. *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 475 (1982).

> as it is called upon to adjudge the legal rights of litigants in actual controversies. In the exercise of that jurisdiction, it is bound by two rules, to which it has rigidly adhered: one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other, never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." ... Kindred to these rules is the rule that one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional.

362 U.S. at 21 (citations omitted). *Accord Burch v. Louisiana*, 441 U.S. 130, 132 n.4 (1979).

Petitioner Burlington Northern ("BN") broadly contends that Mont. Code Ann. § 25-2-118 (1991), is unconstitutional on its face because it permits BN to be sued in any of Montana's 56 counties, regardless of the relationship of the county to the action or to either of the parties. (Petitioner's Brief at 3-4, 37-38.) Here, however, BN was not sued in a county with which it has no ties. It was sued in Yellowstone County, a venue in which BN admittedly conducts substantial business activity and maintains offices and trackage.[3] Consequently, the arguments presented both by BN and by amici in petitioner's support, raising the specter of plaintiffs from all corners of the nation flocking to Montana to reap

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[3]According to the Montana Supreme Court's opinion below, BN "does not deny that it does business in Yellowstone County, Montana." (Pet. App. at 4a.)

large rewards from helpless multistate corporations, mischaracterize the facts and invite resolution of this case on a basis divorced from its actual circumstances.

In practical effect, therefore, BN asks the Court to determine the constitutionality of Montana's venue statute on a purely hypothetical set of facts. Since the action was brought in a county in which BN conducts significant activity, the question before the Court is in reality whether it is reasonable to subject a foreign railroad corporation to suit in a county in which it conducts business, even though a domestic corporation may be sued only in the county of its principal place of business. BN lacks standing, both for want of a "concrete injury" and for failure to assert its own rights, to challenge the statute on the ground that it might be applied "to other persons or other situations in which its application might be unconstitutional." *Raines*, 362 U.S. at 21. Amici States accordingly suggest that the statute be examined in light of the particular circumstances involved in the case before the Court, and that the broader issue be left for another day.

II. SUBJECTING A FOREIGN RAILROAD CORPORATION TO SUIT IN A COUNTY IN WHICH IT CONDUCTS BUSINESS COMPORTS WITH EQUAL PROTECTION STANDARDS.

The Fourteenth Amendment accords the States wide latitude in enacting laws which affect some groups of citizens differently than others. "The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality." *McGowan*

v. State of Maryland, 366 U.S. 420, 425-26 (1961). The States' substantial sovereign authority under our constitutional system is defined through the structure of their governments. *Gregory v. Ashcroft*, 111 S. Ct. 2395, 2399-2400 (1991). "[W]hile the Equal Protection Clause provides a check on such state authority, '[this Court's] scrutiny will not be so demanding where we deal with matters resting firmly within a State's constitutional prerogatives.'" *Id.* at 2402 (quoting *Sugarman v. Dougall*, 413 U.S. 634, 646 (1973)).

Among its constitutional prerogatives is a State's power to define the structure and authority of its judicial system. *Missouri v. Lewis*, *supra*. State legislatures have broad discretion to fix the venue or place of trial of civil actions. "[I]f the protection of fundamental rights by equal laws equally administered is enjoyed, the Constitution does not forbid allowing one person to seek a forum from which another in the same class is excluded." *Bain Peanut Co. of Texas v. Pinson*, 282 U.S. 499, 501 (1931). As recently as 1976, this Court reaffirmed that "'[i]t is fundamental rights which the 14th Amendment safeguards and not the mere forum which a State may see proper to designate for the enforcement and protection of such rights. ... It is not under any view the mere tribunal into which a person is authorized to proceed by a State which determines whether the equal protection of the law has been afforded, but whether in the tribunals which the State has provided equal laws prevail.'" *American Motorists Ins. Co. v. Starnes*, 425 U.S. 637, 644-45 (1976) (quoting *Cincinnati Street R. Co. v. Snell*, 193 U.S. 30, 36-37 (1904)).

Nonetheless, a State may not impose unconstitutional conditions on the grant of a privilege to conduct business within the State. *Western & Southern Life Ins. Co. v. State*

Board of Equalization, 451 U.S. 648, 657-58 (1981). Thus, it is well established that,

> whatever the extent of a State's authority to exclude foreign corporations from doing business within its boundaries, that authority does not justify imposition of more onerous taxes or other burdens on foreign corporations than those imposed on domestic corporations, unless the discrimination between foreign and domestic corporations bears a rational relation to a legitimate state purpose.

Id. at 667-68. The test to determine whether a state purpose is legitimate is "whether it addresses valid state concerns." *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 895 (1985) (O'Connor, J., dissenting). In examining the legislation as applied to this case, therefore, the Court's inquiry focuses on two questions: "(1) Does the challenged legislation have a legitimate purpose? and (2) Was it reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose?" *Western & Southern*, 451 U.S. at 668. Under this analysis, an equal protection challenge will not prevail as long as, given the reasons put forth in support of the classification, "'the question is at least debatable.'" *Id.* at 674 (quoting *United States v. Carolene Products Co.*, 304 U.S. 144, 154 (1938)).

This Court has not hesitated to uphold against equal protection challenge state procedural statutes which have the effect of treating foreign and domestic corporations unequally, so long as the dissimilar treatment is supported by a rational basis. Thus, where New Jersey law permitted the tolling of a statute of limitation against a foreign corporation which had no representative in the state, the Court rejected an equal protection challenge

based on the "reasonable assumption that unrepresented foreign corporations, as a general rule, may not be so easy to find and serve." *G.D. Searle & Co. v. Cohn*, 455 U.S. 404, 410 (1982). Likewise, the Court upheld a statutory period of limitations imposed against foreign but not domestic insurance companies, concluding that the State was not prohibited from making any distinction between the two in the length of time within which suit must be brought. *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U.S. 580, 585 (1935). "It was competent for the Legislature to determine whether such differences exist, and upon the basis of those differences, and in the exercise of a legislative judgment, to make choice of the method of guarding against the evil aimed at." *Id.* at 586. *See also Hughes v. Alexandria Scrap Corporation*, 426 U.S. 794, 811-14 (1976) (state law prescribing different documentation requirements for foreign scrap processors not violative of Equal Protection Clause where related to the basic statutory purpose of clearing state's landscape of abandoned automobiles); *State ex rel. Bond & Goodwin & Tucker v. Superior Court*, 289 U.S. 361, 366 (1933) (difference in method of prescribing how substituted service should be accomplished on corporation after withdrawal acceptable under Equal Protection Clause).

In 1927, this Court held that a foreign corporation had been denied equal protection of the laws when it was sued outside the only county in the State of Arkansas in which it did any business, where Arkansas law provided a narrower range of permissible venue for suits against domestic corporations. *Power Mfg. Co. v. Saunders*, *supra*. Although the Court has stated that *Saunders* is of questionable vitality, *Starnes*, 425 U.S. at 645, n.6, this case does not require that question to be decided. Quite simply, this is not a *Saunders* case.

Since the Court's decision in *Saunders*, a number of courts have rejected equal protection challenges in cases involving different venue requirements for different entities. Thus, the Court of Civil Appeals of Texas found no equal protection violation where a foreign corporation was sued in a Texas county in which it had an agent, a representative and an office, despite the fact that state law afforded wider venue for foreign corporations than for domestic corporations. *Commercial Insurance Co. v. Adams*, 366 S.W.2d 801 (Tex. Civ. App.), *aff'd*, 369 S.W.2d 927 (1963). Distinguishing *Saunders* on its facts and concluding that it had been "weakened" by subsequent decisions, the court found that "[t]he degree of effective control which the state may exercise over domestic corporations as opposed to foreign corporations in general justifies the classification adopted by the state legislature." 366 S.W.2d at 808. *Accord Coastal States Gas Producing Co. v. City of McAllen*, 540 S.W.2d 808 (Tex. Civ. App. 1976) (citing *Starnes*).

A like conclusion was reached in *Aetna Finance Co. v. Gutierrez*, 632 P.2d 1176 (N.M. 1981), in which the court held that a foreign corporation was not entitled to lay venue in the county of its principal place of business, despite the fact that a domestic corporation would have been entitled to do so. Citing *Starnes* and distinguishing *Saunders*, the court held that Aetna -- although it had no county of "residence" under New Mexico law -- suffered no "real and substantial" discrimination under the venue provision since it in fact maintained an office in the county where the defendants resided and where the contract was made. Its "fundamental right to access" to the courts of New Mexico was thus "fully protected." *Id.* at 1180. *See also Hercules Powder Co. v. Tyrone*, 124 So. 74, 77 (Miss. 1929); *Clark v. Louisville & N. R. Co.*, 130 So. 302, 307-08 (Miss. 1930); *Phillips Petroleum Co. v.*

Smith, 61 P.2d 184, 186 (Okla. 1936); *Wilson & Co., Inc. v. Hickey*, 97 P.2d 564, 565-66 (Okla. 1939); *American International Hospital v. Chicago Tribune Co.*, 458 N.E.2d 1305, 1309-10 (Ill. Ct. App. 1983).[4]

Citing *Starnes* and *Snell*, the United States Court of Appeals for the Ninth Circuit upheld a California statute that permitted a political subdivision to bring an action for eminent domain against a public utility before the California Public Utility Commission, even though eminent domain actions against other persons or entities were required to be maintained in the California Superior Court. *Jackson Water Works v. Public Utilities Commission*, 793 F.2d 1090 (9th Cir. 1986), *cert. denied*, 479 U.S. 1102 (1987). Reasoning that an equal protection violation requires the complaining party to demonstrate discrimination "of some substance," the court concluded that "[t]he forum selection results in no ascertainable injury since the same substantive law is applied." 793 F.2d at 1094, 1096. The court found that the State legislature "could have rationally concluded that the public's interest would be better served by allowing the City to select the forum." *Id.* at 1096.

Although the statutes considered in the foregoing cases were drawn differently and applied to different circumstances, the decisions are in harmony with precedent of this Court establishing that a state statute will be upheld against an equal protection challenge so long as it is supported by valid state concerns. "[A]

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[4]*Contra State ex rel. Twin City & Southern Bus Co. v. District Court*, 225 N.W. 915 (Minn. 1929); *Banning v. Minidoka Irrigation District*, 406 P.2d 802 (Idaho 1965); *Pintlar Corp. v. Bunker Ltd. Partnership*, 786 P.2d 543, 546 (Idaho 1990); *Philco-Ford Corp. v. Holland*, 548 S.W.2d 828 (Ark. 1977).

statutory classification impinging upon no fundamental interest, ... need not be drawn so as to fit with precision the legitimate purposes animating it." *Hughes*, 426 U.S. at 813. Applying the imprecise strictures of the Fourteenth Amendment, the courts in these decisions ultimately examined the actual discriminatory impact to determine whether an equal protection violation had been established. In like manner, examination of the circumstances under which Montana's venue statute has been applied in this case reveals no impermissibly discriminatory impact against BN.

In the first instance, subjecting a foreign corporation to suit in a county in which it does business promotes the legitimate State policy to make its courts accessible to injured persons and to hold accountable a corporation which avails itself of the privilege of doing business in the State. Second, allowing a wider venue for suits against a foreign corporation than that allowed for suits against a domestic corporation does not constitute impermissible discrimination against the foreign corporation. To the extent that BN is treated differently in this case, the statute has a rational basis.

> "The degree of effective control which the state may exercise over domestic corporations as opposed to foreign corporations in general justifies the classification adopted by the state legislature. The state policy in this respect is not so arbitrary as to be unconstitutional. As regards foreign corporations submitting to a certain degree of control by qualifying to do business in the state, the justification is less evident, but nevertheless the state is not able to give its citizens the same assurance of effective redress for injuries committed by foreign corporations as it can in the case of domestic corporations."

Stames, 425 U.S. at 647 (Burger, C.J., concurring) (quoting *Commercial Ins. Co. v. Adams*, *supra*, 366 S.W.2d at 808-09).

Montana law evinces a legitimate and real reason for permitting broader venue against foreign corporations than against domestic corporations.[5] Under Montana statutes, a foreign corporation is required to obtain a certificate of authority to conduct business from the Secretary of State.[6] Although the corporation must keep the Secretary of State apprised of its current registered office and registered agent,[7] the registered office "may be the same as any of its places of business" within the state.[8] All corporations are required to file an annual report with the Secretary of State, which must include the address of their registered office in Montana and the address of their principal

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[5]Under Montana law, a domestic corporation "has only one residence, the county in which it has its principal place of business." *Platt v. Sears, Roebuck & Co.*, 721 P.2d 336, 338 (Mont. 1986). *Accord Mapston v. Joint School Dist. No. 8*, 740 P.2d 676, 677 (Mont. 1987).

[6]Mont. Code Ann. § 35-1-1001 (1989) (now codified at Mont. Code Ann. § 35-1-1026 (1991)).

[7]Mont. Code Ann. § 35-1-1008 (1989) (now codified at Mont. Code Ann. § 35-1-1028(1)(e) (1991)); Mont. Code Ann. § 35-1-1013 (1989) (now codified at Mont. Code Ann. § 35-1-1033 (1991)).

[8]Mont. Code Ann. § 35-1-1012 (1989) (now codified at Mont. Code Ann. § 35-1-1032(1) (1991)).

office.[9] Thus, a foreign corporation need not have a principal place of business within the State of Montana and, if it does have one, need not identify it in any document filed with the Secretary of State. It is reasonable to expect, therefore, that a plaintiff seeking to choose a venue in which to file suit against the foreign corporation would have difficulty determining where, if at all, the corporation maintains its principal offices within the State. Moreover, since the corporation may select any of its places of business as its registered office, it may in fact have its principal offices elsewhere than the county housing its registered office. Requiring that corporation to defend a lawsuit in a county not necessarily housing its "principal place of business" is accordingly rationally related to the State's goal of offering an easily-identified forum to persons injured by that corporation's conduct.

Turning again to the facts of this case, additional support may be found for the conclusion that BN is not denied equal protection of the law by allowing venue to be laid in a county in which it conducts business. As the Supreme Court of Montana recognized, section 6 of the Federal Employers' Liability Act, 45 U.S.C. § 56, was designed to allow railroad workers greater flexibility when choosing a forum than that allowed other litigants. (Pet. App. at 9a.) Indeed, an injured plaintiff's right to bring the suit "in any eligible forum" is a substantial right. *Boyd*

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[9]Mont. Code Ann. § 35-1-1101 (1989) (now codified at Mont. Code Ann. § 35-1-1104 (1991)). "Principal office" is defined as "the office, whether in-state or out-of-state, that is designated in the annual report as the office where the principal executive offices of a domestic or foreign corporation are located." Mont. Code Ann. § 35-1-113(17) (1991).

v. Grand Trunk Western R. Co., 338 U.S. 263, 265 (1949).[10] By the terms of section 6 of the FELA, Congress has given the injured worker a right to "choose from the entire territory served by the railroad any place in which to sue, and in which to choose either a federal or a state court of which to ask his remedy. There is nothing which requires a plaintiff to whom such a choice is given to exercise it in a self-denying or large-hearted manner." *Miles v. Illinois Cent. R. Co.*, 315 U.S. 698, 707 (1942) (Jackson, J., concurring). It has thus been recognized that since the FELA plaintiff's right to select the forum is a substantial one, "a certain amount of forum shopping is condoned." *James v. Norfolk & Western Ry. Co.*, 430 F. Supp. 1317, 1319 (S.D. Ohio 1976). A FELA defendant is not entitled to be sued in a particular location simply because it does more business in that location than in another. *Southern Pac. Co. v. Klinge*, 65 F.2d 85, 86 (10th Cir.), *cert. denied*, 290 U.S. 657 (1933).

In short, BN's equal protection argument rings hollow when viewed in light of the circumstances of the instant

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[10]Thus, this Court has observed "that Congress has exercised its authority over interstate commerce to the extent of permitting suits in state courts, despite the incidental burden, where process may be obtained on a defendant, not merely soliciting business but actually carrying on railroading by operating trains and maintaining traffic offices within the territory of the court's jurisdiction." *Miles v. Illinois Cent. R. Co.*, 315 U.S. 698 (1942). Since Commerce Clause analysis is not involved in this case, the Court need not weigh the State's interest against the burden imposed by the state law on interstate commerce. Rather, it need only find that the State's purpose is legitimate and that any burden imposed is rationally related to that purpose, "a relationship that is not difficult to establish." *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 881 (1985).

case. "Especially where Congress has sanctioned"[11] the prerogative of injured railroad workers to bring suit in the forum of their choice, this Court should be reluctant to find that State forum-selection provisions deprive the railroad of the equal protection of the laws. This is particularly true where, as here, the railroad has been sued in a venue in which it does business.

CONCLUSION

The decision of the Montana Supreme Court should be affirmed.

Respectfully submitted,

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[11]*Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System*, 472 U.S. 159, 180 (1985) (O'Connor, J., concurring).